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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,773	07/21/2003	Boris Nejikovsky	740883-176	4232
22204	7590	06/10/2005	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			WHITTINGTON, KENNETH	
			ART UNIT	PAPER NUMBER
			2862	

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/622,773	<b>Applicant(s)</b> NEJIKOVSKY ET AL.	
	<b>Examiner</b> Kenneth J. Whittington	<b>Art Unit</b> 2862	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-57 are subject to restriction and/or election requirement.


#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
Bot Ledynh  
Primary Examiner

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- 5           I.    Claims 1-41, drawn to a method and apparatus for  
              determining the position of a rail with respect to a  
              sensor assembly using a measured signal.
- II.   Claims 42-57, drawn to a method and apparatus for  
                  determining the position of a rail with respect to a  
10               sensor assembly using the strongest reading from a  
                  sensor in an array of sensors in the sensor assembly.

The inventions are distinct, each from the other because of the following reasons:

              Inventions in Group I and Group II are related as  
15   subcombinations disclosed as usable together in a single  
              combination. The subcombinations are distinct from each other  
              if they are shown to be separately usable. In the instant case,  
              invention in Group I has separate utility such as being usable  
              in other processing methods that do not select position based  
20   upon a single sensor in the array having the strongest  
              measurement, as is required in the invention of Group II.

Accordingly the invention in Group I does not require the particulars of the invention in Group II. See MPEP § 806.05(d).

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5

This application also contains claims directed to the following patentably distinct species of the claimed invention:

For Group I:

Species I, Group I: Claims 1-9, 22-25 and 27-41, directed  
10 to a measuring the position of a first rail with a first sensor.

Species II, Group I: Claims 1-21 and 26, directed to a second sensors over a second rail in addition to the first rail and first sensor.

For Group II:

15 Species I, Group II: Claims 42-46 and 54-57, directed to measuring the position of a first rail with a first sensor.

Species II, Group II: Claims 47-53, directed to a second sensor over a second rail in addition to the first rail and first sensor.

20 Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held

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to be allowable. Currently, Claim 1 for Group I is generic and claim 42 of Group II is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected

5 consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. The above listing is provided as a guide. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

10 Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant  
15 must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be  
20 obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or

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admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to  
5 be complete must include an election of the invention to be  
examined even though the requirement be traversed (37 CFR  
1.143), as well as an election of species included in the  
invention, as outlined above. For example, if Group I is  
elected, Applicant must also elect either Species I or II of  
10 Group I. Likewise if Group II is elected, Species I or II of  
Group II must also be elected.

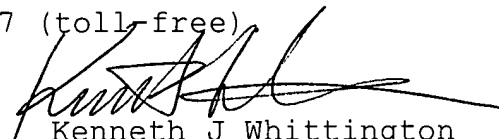
Applicant is reminded that upon the cancellation of claims  
to a non-elected invention, the inventorship must be amended in  
compliance with 37 CFR 1.48(b) if one or more of the currently  
15 named inventors is no longer an inventor of at least one claim  
remaining in the application. Any amendment of inventorship must  
be accompanied by a request under 37 CFR 1.48(b) and by the fee  
required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier  
20 communications from the examiner should be directed to Kenneth  
J. Whittington whose telephone number is (571) 272-2264. The  
examiner can normally be reached on Monday-Friday, 7:30am-  
4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 5 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status 10 information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Kenneth J Whittington  
Examiner  
Art Unit 2862

kjw